

responsibility or until conveyance of the property to the Secretary, whichever first occurs. The holder shall have the right to convey such property to the Secretary only if the property (including elements of the development or project owned in common with other unit owners) is undamaged by fire, earthquake, windstorm, flooding or boiler explosion. The absence of a right in the holder to convey such property which is so damaged shall not preclude a conveyance, if the Secretary agrees in a given case to such a conveyance upon completion of repairs within a specified period of time and such repairs are so completed and the conveyance is otherwise in order.

(i)(1) The terms “date of sale” or “date of acquisition” as used in this section are defined as the date of the event (e.g., sale, confirmation of sale when required under local practice, delivery of deed in case of voluntary conveyance, etc.) which fixes the rights of the parties in the property.

(2) The term “property” or “real property” as used in this section shall include

(i) A leasehold estate which at the time of closing the loan was not less duration than prescribed by § 36.4350(a)(2) of this part, and

(ii) The rights derived by the holder through a foreclosure sale of real estate whether or not such rights constitute an estate in real property under local law.

(j) Except as provided in paragraph (h)(6) of this section, the provisions of this section shall not be in derogation of any rights which the Secretary may have under § 36.4325 of this part. The Under Secretary for Benefits, or the Director, Loan Guaranty Service, may authorize any deviation from the provisions of this section, within the limitations prescribed in 38 U.S.C. Chapter 37, which may be necessary or desirable to accomplish the objectives of this section if such deviation is made necessary by reason of any laws or practice in any State or Territory or the District of Columbia: *Provided, that* no such deviation shall impair the rights of any holder not consenting to the deviation with respect to loans made or

approved prior to the date the holder is notified of such action.

(Authority: 38 U.S.C. 3732, Pub. L. 100-527)

[13 FR 7739, Dec. 15, 1948, as amended at 20 FR 9180, Dec. 10, 1955; 24 FR 2654, Apr. 7, 1959; 28 FR 11505, Oct. 29, 1963; 33 FR 6975, May 9, 1968; 33 FR 18026, Dec. 4, 1968; 34 FR 11095, July 1, 1969; 36 FR 320, Jan. 9, 1971; 40 FR 34591, Aug. 18, 1975; 53 FR 1352, Jan. 19, 1988; 54 FR 27163, June 28, 1989; 60 FR 38262, July 26, 1995; 61 FR 28058, June 4, 1996]

§ 36.4321 Computation of guaranty claims; subsequent accounting.

(a) Subject to the limitation that the total amounts payable shall in no event exceed the amount originally guaranteed, the amount payable on a claim for the guaranty shall be the percentage of the loan originally guaranteed applied to the indebtedness computed as of the earliest of the following dates:

(1) The date of the liquidation sale; or,

(2) The cutoff date established under paragraph (f) of § 36.4319 of this part; or,

(3) The cutoff date established under paragraph (b) of this section.

Deposits or other credits or setoffs legally applicable to the indebtedness on the date of computation shall be applied in reduction of the indebtedness on which the claim is based. Any escrowed or earmarked funds not subject to superior claims of third persons must likewise be so applied.

(b) In any case in which there is a delay in the liquidation sale caused by:

(1) The holder of the loan extending forbearance in excess of 30 days at the request of the Secretary, the cutoff date for computation of the indebtedness shall be 30 days after the date the Secretary determines the liquidation sale would have taken place if there had been no such delay, provided: the net value of the real property securing the loan does not exceed the unguaranteed portion of the indebtedness as of the actual liquidation sale date *and* such net value will exceed the unguaranteed portion of the indebtedness as of the cutoff date;

(2) The Secretary, including the Secretary's failure to provide the holder with advice as to the net value of the security within two working days prior

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to a scheduled liquidation sale but excluding forbearance exercised at the request of the Secretary, with respect to a holder which has complied with the provisions of § 36.4319(b) of this part, the cutoff date for computation of the indebtedness shall be the date the liquidation sale would have taken place if there had been no such delay;

(3) A voluntary case commenced under Title 11, United States Code (relating to bankruptcy), the cutoff date for computation of the indebtedness shall be 30 days after the date the Secretary determines the liquidation sale would have taken place if there had been no such delay, provided: the net value of the real property securing the loan does not exceed the unguaranteed portion of the indebtedness as of the actual liquidation sale date *and* such net value will exceed the unguaranteed portion of the indebtedness as of the cutoff date.

(c) Adjustment of cutoff dates:

(1) Any cutoff date established under § 36.4319(f) of this part or paragraph (b) of this section will be adjusted by a period of months corresponding to the number of installment payments, if any, received by the holder and credited to the indebtedness after the cutoff date is established.

(2) When a cutoff date is established under paragraph (b)(2) of this section, the actual liquidation sale date will be used for purposes of computing the indebtedness in any subsequent accounting between the holder and the Secretary; if an earlier cutoff date is in effect at the time delay in a liquidation sale is caused by the Secretary, such date will not be modified by application of the provisions of paragraph (b)(2) of this section, but will be extended by an interval corresponding to the delay in the liquidation sale caused by the Secretary for purposes of computing the indebtedness in any subsequent accounting between the holder and the Secretary.

(3) Any cutoff date established under § 36.4319 of this part or paragraph (b) of this section will be considered to be the liquidation sale date. Such date will be modified in accordance with paragraph (b) of this section if the provisions of

that paragraph are applicable after such date has been established.

(Authority: 38 U.S.C. 501)

(d) Credits accruing from the proceeds of a sale or other disposition of the security subsequent to the date of computation, and prior to the submission of this claim, shall be reported to the Secretary incident to such submission, and the amount payable on the claim shall in no event exceed the remaining balance of the indebtedness.

(Authority: 38 U.S.C. 501)

(e) The claimant shall be deemed to have received as trustee for the benefit of the United States any amounts received on account of the indebtedness after the date of the claim, from the proceeds of a sale of the security or otherwise, to the extent such credits exceed the balance of the indebtedness unsatisfied by the payment of the guaranty. The claimant shall immediately pay such amounts to the Secretary to the extent of the debtor's liability to the Secretary as guarantor.

(f)(1)(i) Except as provided in paragraph (f)(1)(ii) of this section, a holder shall file a claim for payment under the guaranty no later than 1 year after the completion of the liquidation sale. For purposes of this section, the liquidation sale will be considered completed when:

(A) The last act required under State law is taken to make the liquidation sale final, but excluding any redemption period permitted under State law;

(B) If a holder accepts a voluntary conveyance of the property in lieu of foreclosure, the date of recordation of the deed to the holder or the holder's designee; or

(C) In the case of a sale of the property to a third party for an amount less than is sufficient to repay the unpaid balance on the loan where the holder has agreed in advance to release the lien in exchange for the proceeds of such sale, the date of settlement of such sale.

(ii) With respect to any liquidation sale completed prior to February 1, 2008, all claims must be submitted no later than February 2, 2009.

(2) If additional information becomes known to a holder after the filing of a

guaranty claim, the holder may file a supplemental claim provided that such supplemental claim is filed within the time period specified in paragraph (f)(1) of this section.

(3) No claim under a guaranty shall be payable unless it is submitted within the time period specified in paragraph (f)(1) of this section.

(4) In the event that VA does not approve payment of any item submitted under a guaranty claim, VA shall notify the holder what items are being denied and the reasons for such denial. The holder may, within 30 days after the date of such denial notification, submit a request to VA that one or more items that were denied be reconsidered. The holder must present any additional information justifying payment of items denied.

(Authority: 38 U.S.C. 501)

[54 FR 27163, June 28, 1989, as amended at 73 FR 6308, Feb. 1, 2008]

§ 36.4322 Computation of indebtedness.

In computing the indebtedness for the purpose of filing a claim for payment of a guaranty or for payment of an insured loss, or in the event of a transfer of the loan under § 36.4318 (a), or other accounting to the Secretary, the holder shall not be entitled to treat repayments theretofore made as liquidated damages, or rentals, or otherwise than as payments on the indebtedness, notwithstanding any provision in the note, or mortgage, or otherwise, to the contrary.

[13 FR 7278, Nov. 27, 1948]

§ 36.4323 Subrogation and indemnity.

(a) The Secretary shall be subrogated to the contract and the lien or other rights of the holder to the extent of any sum paid on a guaranty or on account of an insured loss, which right shall be junior to the holder's rights as against the debtor or the encumbered property until the holder shall have received the full amount payable under the contract with the debtor. No partial or complete release by a creditor shall impair the rights of the Secretary with respect to the debtor's obligation.

(b) The holder, upon request, shall execute, acknowledge and deliver an

appropriate instrument tendered for that purpose, evidencing any payment received from the Secretary and the Secretary's resulting right of subrogation.

(c) The Secretary shall cause the instrument required by paragraph (b) of this section to be filed for record in the office of the recorder of deeds, or other appropriate office of the proper county, town or State, in accordance with the applicable State law. The filing or failure to file such instrument for record shall have the legal results prescribed by the applicable law of the State where the real or personal property is situated, with respect to filing or failure to so file mortgages and other lien instruments and assignments thereof.

The references herein to "filing for record" include "registration" or any similar transaction, by whatever name designated when title to the encumbered property has been "registered" pursuant to a Torrens or other similar title registration system provided by law.

(d) As a condition to paying a claim for an insured loss the Secretary may require that the loan, including any security or judgment held therefor, be assigned to the extent of such payment, and if any claim has been filed in bankruptcy, insolvency, probate, or similar proceedings such claim may likewise be required to be so assigned.

(e) Any amounts paid by the Secretary on account of the liabilities of any veteran guaranteed or insured under the provisions of 38 U.S.C. chapter 37 shall constitute a debt owing to the United States by such veteran.

(Authority: 38 U.S.C. 3732)

(1) Prior to a liquidation sale, an official authorized to act for the Secretary under provisions of § 36.4342 of this part may approve a complete release of the Secretary's right to collect a debt owing to the United States under this paragraph and/or under paragraph (a) of this section provided such official determines:

(i) The loan default was caused by circumstances beyond the control of the obligor;

(ii) There are no indications of fraud, misrepresentation or bad faith on the part of the obligor in obtaining the